is the category of membership of the applicants' employees in the MMEU. I have anxiously searched the membership rules of the MMEU and can find no description of workmen therein or 'similar' thereto that can apply to the applicants' employees. The Minister's decision, therefore, is in breach of the membership rules of the MMEU and consequently in breach of section 15(1)(b)(v) of the Trade Unions Ordinance. It is said that the applicants should have appealed within the prescribed time against the Registrar's opinion under section 17 of the Trade Unions Ordinance. There is no merit in this argument. In the first place, the Registrar's opinion is irrelevant in a dispute concerning recognition under section 9(5) of the Industrial Relations Act and in any event an employer has no right of appeal under the Trade Unions Ordinance against the opinion of the Registrar under section 2(2) since such an opinion could only be made on a matter between the Registrar and the trade union. This is so even if the employer (as the applicants did in this case) asked for the advice of the Registrar whether a particular trade union could represent its employees. The employer is not bound by the Registrar's advice and if he does not accept the advice (as happened here) the employer's remedy is not to accord recognition. This is what the applicants did and in my opinion rightly so. In the circumstance of this case, an appeal under section 17 of the Trade Unions Ordinance would arise if the Registrar held the view that the MMEU should not have enrolled the applicants' employees on the grounds of disimilarity and proposed to cancel the registration of the union under section 15. In such a case it is for the MMEU to appeal against the Registrar's opinion. It will be contrary to the principles of the trade union movement if an employer (outsider) was to be involved in such a dispute with a right of appeal.

The Minister's decision was made on March 24, 1977. By then the majority of the applicants' employees had resigned from the MMEU and joined the NUCW. Further, the applicants had accorded recognition to the NUCW. It is not for me to say whether the NUCW is the appropriate union to represent the applicants' employees nor whether the applicants should have accorded recognition since these issues are not before the court. But the fact remains that at the time of the Minister's decision, the majority of the applicants' employees were members of the NUCW which had been accorded recognition by the applicants. The Minister is, therefore, in error of law since such a decision is contrary to section 11 of the Industrial Relations Act.

For these reasons, I find that the Minister's decision is erroneous in points of law and fact on the face of the record and I accordingly allowed the application with costs to be paid to the applicants by the 1st and 2nd respondents.

Application allowed.

Solicitors: *Shook Lin & Bok; Xavier & Vadiveloo.*

THE BAR COMMITTEE OF PAHANG v. JOSEPH AU KONG WENG

[O.C.J. (Abdul Razak J.) January 26, 1979]

[Kuantan — Originating Notice of Motion No. 3 of 1979]

Legal Profession — Advocate and solicitor — Applicant sought to bar respondent from practising as such — Objection by respondent that applicant had no locus standi — Legal Profession Act, 1976, ss. 36(1), 41(1) & (2), 57(e) & (j), 73(ii).

Locus standi — Whether Bar Committee of Pahang had locus standi to act on its own behalf in legal proceedings — Meaning and intention of Legal Profession Act 1976 — Legal Profession Act, 1976, ss. 36(1), 41(1) & (2), 57(e) & (j), 73(ii).

The applicant in this case sought to bar the respondent, an advocate and solicitor and member of the Pahang Bar from practising as an advocate and solicitor as he was an unauthorised person within the meaning of section 36(1) of the Legal Profession Act 1976. A preliminary objection was raised by the respondent to set aside the application on the ground that the Bar Committee had no *locus standi* but only the Bar Council had.

Held: (1) the right to sue or be sued in so far as the conduct of the members of the Malaysian Bar and all matters pertaining to it are concerned is that of the Malaysian Bar Council only and not the Bar Committee;

(2) the action of the Bar Committee clearly was not related to the Bar Council and therefore for present purposes it had no *locus standi.*

ORIGINATING NOTICE OF MOTION.

S. Sivasubramanian for the applicant.

Joseph Au Kong Weng for the respondent.

Cur. Adv. Vult.

Abdul Razak J.: There has been an objection taken in this application to say that the applicant the Bar Committee Pahang has no *locus standi* but the Bar Council has. The Bar Committee of Pahang is seeking to bar the respondent an advocate and solicitor and member of the Pahang Bar from practising as an advocate and solicitor as he is an unauthorised person within the meaning of section 36(1) of the Legal Profession Act, 1976. They seek a declaration to that effect. The application was met at the hearing by a preliminary objection by the respondent to set it aside for the reason I have just stated. The respondent also says that the application has not shown any merit because the affidavit supposedly in support is inadmissible being sworn before the originating motion was filed. I do not think for the reasons which I shall state I need to deal with this point.

It would appear to me therefore that if the preliminary objection succeeds the application and all the relief set out under it, will also, for the time being at least, fall to the ground. I will explain in clearer terms what this in effect means.

The contention of the respondent was that the Bar Council and not the Bar Committee is the person with the capacity or authority to sue in this matter and in all cases. In this respect I was referred to section 41(1) and (2) of the Act for this authority. Section 41(1) reads —

"41(1) There is established a body corporate to be called the 'Malaysian Bar'."

Sub-section (2) reads —

"41(2) The Malaysian Bar shall be a body corporate with perpetual succession and a common seal, and with power sub-

ject to this Act to sue and be sued in its corporate name and to acquire and dispose of property both movable and immovable and to do and to perform such other acts as bodies corporate may by law perform."

The respondent says that such construction is merely consistent with the power given to the Bar Council under section 57(j) of the Act which reads —

"57(j) to institute, conduct, defend, compound or abandon any legal proceedings by and against the Malaysian Bar or its officers or otherwise concerning the affairs of the Malaysian Bar and to compound and allow time for payment or satisfaction of any debts due or of any claims or demands made by or against the Malaysian Bar."

The applicant's counsel on the other hand, refers me to section 73(ii) which reads as follows —

"73(ii) to promote and safeguard the interests of advocates and solicitors who are members of the State Bar;"

Counsel says it is the duty of the Committee to safeguard the interests of its members by filing an action against a recalcitrant member.

But two things must first of all be put straight. First that it cannot be but common ground that whatever power the Committee has to act on its own behalf as far as legal proceedings are concerned must be found in the Act itself and secondly the intention of the Act can only be gathered from the language of the Act and by reading it as a whole. One cannot help feeling that from the force of counsel's argument he is urging that the Bar Council and the Bar Committee are separate entities having separate rights and duties and having a life of their own. If that is so it is therefore natural to assume that the legislature in making provision on a matter in one, would also make provision for the same matter in the other. In so far as the Bar Council is concerned there can be no doubt that it has the capacity to sue and be sued because section 41 expressly so provides. It has also the power to do so because section 57(j) gives it that power. We can therefore say that in so far as the Bar Committee is concerned that if the legislature had intended to give a similar power and capacity that it would have similarly so legislated, but clearly looking at section 73 no such provisions *mutatis mutandis* had ever been made. Consequently if it is pointed out that under sub-section (ii) the Committee is given the power to promote and safeguard the interests of its members it cannot be but construed to mean that it can do so provided, whatever action is taken, falls short of proceedings in court. It seems to be the clear implication therefore that in so far as taking legal proceedings in court is concerned the Bar Council is solely authorised to do so. Indeed that must be the necessary implication if section 57(e) is to have effect which reads —

"57(e) to represent members of the Malaysian Bar or any section thereof or any particular member in any matter which may be necessary or expedient;"

It seems to be the clear implication therefore that the Bar Committee must necessarily act through the Bar Council in matters of legal proceedings in court.

I would have no hesitation therefore in saying the maxim *expressio unius est exclusio alterius* must apply here. But one thing must be said however. That what has been said so far goes only to support the view that the right to sue or be sued in so far as the conduct of the members of the Malaysian Bar and all matters pertaining to it are concerned is that of the Bar Council only and not the Bar Committee, which must necessarily mean on general principle that it does not prevent the Council, if it chooses, to permit the Bar Committee to use its name by related action. That would I imagine be an equitable construction if only to save the cost of the Bar Council. All I need to say now therefore is that the action of the Bar Committee clearly is not related to the Bar Council and therefore for present purposes has no *locus standi*. It is open therefore now to the Bar Council to resolve whether it wishes to take up the issue in this court in place of the Bar Committee or for the Bar Committee to do what is necessary to restore itself. For the moment I will dismiss this application with liberty to the parties to apply.

Order accordingly.

Solicitors: *S. Sivasubramanian; Au Ah Wah & Co.*

KULIM RUBBER PLANTATIONS LTD. v. DIRECTOR-GENERAL OF INLAND REVENUE

[A.C.J. (Vohrah J.) April 14, 1979]
[Kuala Lumpur — Tax Appeal No. 1 of 1976]

Revenue Law — Sale of buildings on which capital allowances given — Value of buildings for purpose of income tax — When proceeds of sale deemed to be income — Compensation payments made to estate agents and secretaries — Whether allowable deductions — Outgoings and expenses incurred in production of income — Income Tax Act, 1967, ss. 14 & 18A.

Precedent — English authorities on income tax — Whether relevant.

The appellant in this case owned extensive rubber plantations in Malaysia. In 1961 it decided on a new policy by embarking on a large scale programme of oil-palm planting. To implement this policy and to raise funds it decided on selling the more outlying and less profitable rubber estates. In 1964 the appellant sold various pieces of land in Kahang, Kluang, Johore, in which were a number of buildings on which the appellant claimed capital allowances. In 1965 the appellant sold several pieces of land in Terap, Kulim, Kedah on which it also claimed capital allowances. The appellant had also employed agents and secretaries in the conduct of its business and had agreed that in the event of the sale of the whole or part of the appellant's estate, they would be entitled to compensation.

In respect of the Kahang estate the total capital allowances granted by Revenue amounted to $16,937 and the proceeds of sale totalled $36,146. The capital expenditure incurred on the building was $37,052. In respect of the estate in Terap, the capital allowances granted by Revenue amounted to $58,824. The proceeds of sale totalled $55,951.50. The capital expenditure incurred on the buildings totalled $91,649. The appellant paid $405,334 to its London and Eastern Agents and claimed deduction.

The Special Commissioners held that the taxable income of the appellant (a) for the buildings on the Kahang estate was $19,209, the proceeds of sale and (b) for the buildings on the estate at Terap was $55,951.50, the proceeds of sale. They also held that the payments to the agents were not deductible as they were not incurred wholly and exclusively in the production of income.

The questions that arose in this case were (1) the value of the buildings on the estates at the time of sale; (2) whether